Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, L-Band, and 1.6/2.4 GHz Band	)	IB Docket No. 01-185
	)	
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service	)	ET Docket No. 95-18

REPLY COMMENTS OF CONSTELLATION COMMUNICATIONS HOLDINGS, INC.

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EXECUTIVE SUMMARY

Constellation believes that the authorization of ancillary terrestrial operations as part of the currently licensed L-band, 1.6/2.4 GHz and 2 GHz MSS systems will increase the quantity and quality of advanced wireless services offered to the public. In particular, it will insure that all users throughout the United States have access to a multitude of high quality advanced wireless services. Additionally, regulatory flexibility to operate ancillary terrestrial facilities will result in more efficient spectrum utilization by allowing MSS operators to serve more customers without requiring the allocation of additional spectrum.

Opposition to this regulatory flexibility comes primarily from terrestrial CMSR interests who seek the re-allocation of the 2 GHz MSS spectrum for their own use. Their claims that the Commission lacks the legal authority under Sections 303(y) or 309(j) to afford MSS licensees the same regulatory flexibility it has afforded many other licensees should be rejected. Instead, the Commission should promptly re-affirm its proposals to allow MSS licensees to conduct ancillary terrestrial operations and adopt service rules similar to those proposed by Constellation in its initial Comments in this proceeding.

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REPLY COMMENTS OF CONSTELLATION COMMUNICATIONS HOLDINGS, INC.

Constellation Communications Holdings, Inc. ("Constellation") submits these Reply Comments in the above captioned proceeding.[1] In its initial comments in this proceeding, Constellation demonstrated that ancillary terrestrial operations will significantly enhance the ability of users to obtain access to a multitude of high quality advance wireless services. As discussed below, the parties, which oppose the flexible use of MSS spectrum are merely articulating self-serving arguments that will allow them to obtain this recently allocated and assigned spectrum for their own use. In these Reply Comments, Constellation urges the Commission to reject this position in favor of policies that will enhance the provision of wireless services to the public. [2]

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[1] Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz L-Band and 1.6/2.4 GHz Bands, Notice of Proposed Rulemaking, IB Docket No. 01-185, released August 17, 2001, ("Notice").

[2] Constellation is a licensee in the 1.6/2.4 GHz and 2 GHz MSS bands and therefore has a vital interest in this proceeding. In these Comments, Constellation uses the notation "L-Band" to denote the 1525-1559 MHz and 1626.5-1660.5 MHz bands, "1.6/2.4 GHz" or "Big LEO" to denote the 1610-1626.5 MHz and 2483.5-2500 MHz bands, and "2 GHz" to denote the 1990-2025 MHz and 2165-2200 MHz bands.

I. Authorization Of Ancillary Terrestrial Operations Is In The Public Interest

As demonstrated in the initial comments by parties supporting the Commission's proposals, the grant of flexibility to MSS licensees to conduct ancillary terrestrial operations will allow both rural and urban/suburban users to obtain access to new advanced wireless services[3] The principle opposition to the grant of such flexibility is based on the assertions of terrestrial CMRS carriers that the 2 GHz MSS licenses should have never been allocated to the MSS because the spectrum would be better used for exclusive terrestrial use.[4] This position ignores the likelihood that additional spectrum will be identified in other ongoing proceedings for terrestrial CMRS operations. It also will result in an arbitrary and capricious interruption in the orderly introduction of new MSS technology.

The recent issuance of 2 GHz MSS licenses represent only a significant milestone in the potential development of innovative MSS technology.[5] Ancillary terrestrial operations will extend the benefits of this technology to serve more customers without requiring any additional spectrum.[6] It represents one step in the long-term evolution of MSS from large, shipboard terminals in the 1970's to portable terminals in the 1990's, to handheld terminals by 2000. The Commission should not allow this progress to be prematurely halted by the never-ending appetite of terrestrial carriers for additional spectrum. As demonstrated in the recently filed comments in

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3 *See e.g.* Comments of Constellation at 2-5 and Globalstar Bondholders at 18-19.

4 *See e.g.* Comments of AT&T Wireless at 13, Cingular/Verizon at 6 and 20-23 and Telephone and Data Systems at 10-11.

5 Various parties have documented the benefits of MSS. *See e.g.* Comments of Globalstar Bondholders at 3-16, Loral Space and Communications at 2-5 and Motient at 5-11. It also has been demonstrated that the public interest would be served by authorizing MSS licensees to conduct ancillary terrestrial operations. *See, e.g.* Comments of Celsat America at 10-14, Constellation at 7-11, Globalstar at 6, Globalstar Bondholders at 19-20, Mobile Communications Holdings at 5-8 and Motient at 11-17.

6 Ancillary terrestrial operations will also result in more economic utilization of the spectrum. *See* Comments of Progress and Freedom Foundation at 13.

ET Docket No. 00-258,[7] there are sufficient spectrum allocation alternatives available to satisfy the demand for terrestrial CMSR carriers for the foreseeable future without the need to re-allocate MSS spectrum. Consequently, the Commission should implement the proposal to provide MSS licensees the flexibility to offer wireless services to the public from space platforms and complementary ancillary terrestrial transmitters in spectrum currently allocated and assigned to MSS licensees.

A. Flexible Use Of MSS Bands Is Consistent With Section 303(y) Of The Communications Act

Existing terrestrial carriers in their comments argue that ancillary terrestrial operations by MSS licensees do not meet the objectives of Section 303(y) of the Communications Act.[8] Constellation disagrees with this view. As the proponents of MSS regulatory flexibility demonstrated in the initial comments in this proceeding, the grant of flexibility for ancillary terrestrial operations in MSS bands clearly meets the requirements of Section 303(y).[9] If MSS licensees construct and operate ancillary terrestrial facilities without causing harmful interference to existing users, they will be operating in a manner consistent with the international obligations of the United States regardless of the international status of an allocation to the mobile service in the band.[10] Moreover, MSS system licensees will be making new investments in communications services and systems and in technology development, which are the objectives specified in Section 303(y).

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7 *See* Comments of Constellation filed October 22, 2001 and Reply Comments filed November 8, 2001, ET Docket No. 00-258.

8 *See e.g.* Comments of AT&T Wireless at 4-5.

9 *See e.g.* Comments of Celsat America at 10-14, Globalstar at 7-9, Loral Space and Communications at 8-9, Motient at 21 and New ICO Global at 29.

10 *See e.g.* Comments of the Aviation Industry Parties at 6-8 and Inmarsat at 18-20.

Opponents of ancillary terrestrial operations offer two contradictory arguments to support their views. On one hand, they argue that MSS licensees will receive an economic "windfall." At the same time, however, they contend that the MSS licensees would underutilize this spectrum by not implementing terrestrial facilities in this "free" spectrum.[11] They just cannot have it both ways. Either there is a windfall or the spectrum will be underutilized. As the MSS proponents in this proceeding demonstrate, the public will not be harmed if MSS licensees are able to provide more customers with service using the their existing licensed spectrum. To the contrary, what will harm the public, especially rural users, is the unavailability of MSS services in all locations throughout the United States.

B. Ancillary Terrestrial Authorizations Should Be Limited To The Current MSS Licensees

In order to support their desire for re-allocation of MSS spectrum, some terrestrial carriers urge the separation of terrestrial and satellite operations into separate bands on the basis that the mitigation of intra-system interference requires the assignment of non-overlapping channels for terrestrial and satellite channels.[12] However, these claims are not valid for integrated MSS/terrestrial systems. Non-overlapping channels are required in MSS systems only in the area around terrestrial base stations. MSS frequencies used for terrestrial links in urban areas can be re-used for satellite links in other areas of the satellite beam, and different frequencies can be used in different urban areas served by an MSS system to optimize local

[11] *See* Comments of CTIA at 1.

[12] *See e.g.* Comments of AT&T Wireless at 2 and 5, Telecommunications Industry Association/Wireless Communications Division at 3-4.

frequency usage. Moreover, such band segmentation is not needed to allow handsets to differentiate between satellite and terrestrial operations.[13]

On the other hand, it is not practical to authorize other carriers to provide terrestrial services in MSS bands because a single management system is needed to assign frequencies to satellite and terrestrial users in an integrated manner to avoid intra-system interference between satellite and terrestrial operations.[14] Thus, a parallel licensing approach for licensing both MSS and terrestrial operators to use the same frequencies, such as that suggested by Iridium[15] is unworkable in practice.

In order to invoke competitive bidding requirements under Section 309(j) of the Communications Act, the terrestrial carriers contend that any authorization to provide terrestrial service in the MSS bands be separate from the existing authorization to provide MSS service, because MSS licenses do not currently permit terrestrial services.[16] However, on various occasions, the Commission has expanded the range of services offered using licensed facilities to include operations normally provided in other radio services.[17] Moreover, there is no legal bar to the Commission's expansion of MSS licenses to include terrestrial operations. Modifying existing licenses to permit more flexible operations does not entail mutually exclusive applications. Constellation and other parties demonstrated in their initial comments why these

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13 *See* Comments of Telecommunications Industry Association/Wireless Communications Division at 3.

14 *See e.g.* Comments of New ICO Global at 31-36.

15 *See* Comments of Iridium at 5-6. Iridium's concept is made even more unworkable by terrestrial use assignments larger than a single MSS system assignment requiring real-time coordination of terrestrial channel assignments with multiple MSS system operators to avoid interference.

16 *See e.g.* Comments of Cingular/Verizon at 8-9 and CTIA at 7-8.

17 *See e.g.* Comments of Globalstar Bondholders at 23-27, Loral Space and Communications at 7-8, Motient at 18-20 and New ICO Global at 25-29.

attempts by terrestrial carriers to equate such modifications of existing licenses to applications for new licenses to provide terrestrial services must be rejected.[18]

The Commission should reject attempts to impose competitive bidding under Section 309(j) of the Communications Act on "equitable" grounds[19] as punitive to MSS operators. Billions of dollars of investment are required to establish and maintain the satellite constellations required by the terms of MSS system licenses.[20] Commission rejection of the proposal to provide MSS licensees more flexibility would only result in denying rural and suburban/urban users more options in obtaining critical new wireless services.[21] It would also insure that less efficient spectrum utilization is imbedded in the Commission's MSS policies and rules. Certainly, limiting options for wireless users and inefficient spectrum utilization will not serve the public interest.

In order to create the possibility of mutual exclusivity under Section 309(j), the Commission would first have to modify or revoke the outstanding MSS licenses. The Commission would also need to initiate and conclude the appropriate rulemaking to re-allocate the bands to remove the MSS allocation and create the new terrestrial service. It would then need to establish and conduct the appropriate auction proceeding. However, unless the Commission is willing to revoke all of the outstanding MSS licenses, the amount of spectrum

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18 *See e.g.* Comments of Constellation at 21-22, Loral Space and Communications at 10-14 and New ICO Global at 38-43.

19 *See e.g.* Comments of AT&T Wireless at 1-2 and CTIA at 8-9.

20 It should be noted that when establishing the MSS, the Commission determined that the public interest would best be served if MSS licensees were required to meet certain domestic and international coverage obligations. These requirements impose additional costs and decreased flexibility on MSS licensees for the sake of certain public interest obligations that the record in the various MSS proceedings deemed appropriate.

that could be made available for competitive bidding is likely to be small, compared to the amounts of additional spectrum being sought by CMSR carriers in other proceedings.[22]

Arguments that it is not in the public interest to avoid mutual exclusivity[23] are simply arguments that MSS spectrum should be re-allocated for terrestrial CMRS use. However, Constellation has demonstrated that the requirements of terrestrial CMRS operators for additional spectrum can be satisfied by means other than re-allocating MSS spectrum.[24]

Indeed, the initial grant of MSS licenses in a manner that avoided mutual exclusivity satisfied the public interest goals of Section 309(j) by allowing more rapid deployment of satellite technology to meet important public communications needs particularly in rural and underserved areas. Although auctions are clearly precluded for awarding licenses for non-GSO MSS providing global satellite service by the ORBIT Act,[25] the high investment costs required to bring an MSS system into operation has not provided any unjust enrichment to any licensee.[26]

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21 *See* Comments of Telephone and Data Systems ("TDS") at 3-6. Actually, their opposition extends to the grant of any spectrum flexibility in any band or service. Adoption of this position would prevent any improvement in spectrum utilization or evolution of innovative new service concepts.

22 *See* generally the comments of terrestrial carriers in the Advanced Wireless Services Rulemaking proceedings in ET Docket No. 00-258 requesting the reallocation of 120 to 200 MHz of spectrum.

23 *See e.g.* Comments of AT&T Wireless at 14-15.

24 *See* Comments and Reply Comments of Constellation filed in ET Docket 00-258.

25 The Commission should reject hyper-technical readings of the plain text of Section 647 that try to argue that the spectrum licensed to an MSS system is not subject to competitive bidding when used for satellite links but is when used for other purposes. *See e.g.* Comments of AT&T Wireless at 16 and Cingular/Verizon at 13. The Commission has already assigned spectrum and orbital locations to MSS licensees and no new assignment of spectrum is required to permit ancillary terrestrial operations. Moreover, basing an auction requirement on how a frequency is used is not logical since any particular MSS frequency can be used for a terrestrial transmission in one location and a satellite transmission in another, even in the same satellite beam. *See also* Comments of Loral Space and Communications at 15.

26 Although the Progress and Freedom Foundation advocates the imposition of fees on MSS ancillary terrestrial operations, S*ee* Comments of Progress and Freedom Foundation at 13-15, it provides no legal basis for the Commission to impose any such fees and admits that there is no rational basis on which to determine the magnitude of any such fees. *See* Comments of Motient at 31-32, opposing the imposition of any such fees.

Nor do they deny Designated Entities access to spectrum in rural areas.[27] In light of the public benefits of ancillary terrestrial operations in MSS bands, the Commission is well advised to avoid the long and costly administrative procedures that would be required to license MSS spectrum for terrestrial operations by auctions, compared to the faster and simpler license modification procedure involved in the Commission's proposal.

C. Ancillary Terrestrial Operations Should Be Authorized In The Big LEO 1.6/2.4 GHz Bands

Although the Commission did not have before it a formal request for ancillary terrestrial operations by any 1.6/2.4 GHz MSS licensee when it issued its Notice, all three Big LEO licensees support such operations.[28] While several parties oppose the ancillary terrestrial operations concept as a general matter, only CTIA singles out the 1.6/2.4 GHz MSS. CTIA apparently opposes extension of ancillary terrestrial authorizations to Big LEO systems in the 1.6/2.4 GHz band because there is too much spectrum allocated to MSS and the Big LEO spectrum should be re-allocated for other uses, such as CMRS.[29] However, there are two MSS systems that are fully operational in the 1.6/2.4 GHz bands that satisfy the proposed coverage requirements for ancillary terrestrial authorizations. CTIA provides no rationale basis for denying such authorizations to these two operational systems if ancillary terrestrial operations are authorized to MSS operators in other bands. As noted by several parties, equitable treatment

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[27] *See* Comments of Rural Cellular Association at 4-5. The concerns of Designated Entities can be better satisfied by Commission action of their PCS "fill-in" proposal that provides geographical demarcation between compatible terrestrial networks than an unworkable interference/coordination approach in MSS bands to prevent interference between satellite and independently operated terrestrial facilities in rural areas. Although TDS argues that rural areas would be better served by allocating more spectrum for terrestrial services than MSS, it provides no documentation that demonstrates that the demand for wireless service in rural areas exceeds the amount of spectrum allocated (or proposed to be allocated) for terrestrial service in urban areas. *See* Comments of TDS at 12-13.

[28] Constellation requested the authorization of ancillary terrestrial operations in the 1.6/2.4 GHz MSS bands in its Comments at 12-13. *See also* Comments of Globalstar at 17-18 and Iridium at 4.

[29] *See* Comments of CTIA at 14-15.

of MSS licensees requires that the same flexibility for ancillary terrestrial operations should be afforded to all MSS operators, including the Big LEO MSS licensees in the 1.6/2.4 GHz bands, since any other approach would be anti-competitive.[30]

D. The Service Rules Proposed By Constellation Address Implementation Issues Raised In The Comments

Constellation presented a proposed footnote to the U.S. Table of Frequency Allocations and a comprehensive draft of proposed service rules for MSS ancillary terrestrial operations in its Comments to complement the Commission's proposals in its Notice.[31] For the most part, these proposed service rules appear to be consistent with the views by other parties supporting ancillary terrestrial operations by MSS licensees.[32]

In its proposed service rules, Constellation believes that it has adequately addressed the Commission's concerns that terrestrial operations in MSS bands be "ancillary" with proposed rule text that implements the criteria identified in the Notice.[33] For example, Constellation's proposed rules are based on unambiguous technical concepts, such as "coverage." This approach is supported by other parties in this proceeding.[34] However, it is premature to codify specific standards in the rules on the amount of time to be afforded to licensees to remedy temporary lapses in maintaining the required coverage due to in-orbit satellite failures.

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30 *See e.g.* Comments of Iridium at 4, Loral Space and Communications at 9-10 and Mobile Satellite Users Association at 5.

31 *See* the Appendix to Constellation's Comments for proposed rule text, and associated discussion at 22-37.

32 *See e.g.* Comments of Motient at 28-30 and 32 and New ICO Global at 43-49.

33 *See* Comments of Constellation at Appendix for text of proposed § 25.146.

34 *See e.g.* Comments of Constellation at 25-26 and New ICO Global at 44.

Some of the parties argue that ancillary operations are "substitute" not "ancillary."[35] Others propose more restrictive conditions on MSS operators, such as requirements that satellite use in urban areas be predominant and terrestrial use minimal[36] or that terrestrial repeaters in urban areas be limited to repeaters that simply re-transmit satellite signals.[37]

Ancillary terrestrial operations are not a "substitute" for satellite services since the integrated satellite/terrestrial system will be designed to provide the same services regardless of whether the service is provided by satellite or terrestrial facilities. Certainly, one would expect that the link transmission parameters would be optimized for either the satellite or terrestrial signal path available to the user. Since this approach allows more users to receive service in the same amount of spectrum, more efficient spectrum utilization will result. More restrictive conditions will hamper MSS operations and result in inefficient spectrum use. Placing limits on terrestrial use in urban areas contradicts the entire purpose of ancillary terrestrial use since poor signal propagation is what prevents the satellite signal from being received in the first place. Requiring simple repeaters of satellite signals in urban areas results in duplicative frequency use for a single communications link. Neither condition allows for the limited amount of spectrum available in the MSS band to be used in a manner that serves the greatest number of users. Suggestions for the requirement of some form of a "central switch" may be feasible for GSO systems,[38] but would be impractical in non-GSO systems.[39] Consequently, none of these proposed restrictions should be included in the service rules.

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35 *See e.g.* Comments of Rural Cellular Association at 2-4.

36 *See* Comments of CTIA at 6.

37 *See* Comments of CTIA at 6-7.

38 *See* Comments of Motient at 25-26.

39 *See* Comments of Constellation at 31, n. 65 and New ICO Global at 45-46.

Several parties note the limited technical data presented to date and the need for specific parameters to assess the potential for interference to other radio systems.[40] However, this is not a sufficient reason to delay adopting rules permitting ancillary terrestrial operations in MSS bands or overly restrictive technical standards. Prior to implementing ancillary terrestrial operations, each MSS operator will be required to file a blanket application which would contain full technical details of its proposed facilities. Since each MSS licensee is likely to take a different technical approach to ancillary terrestrial facilities, it would be premature to specify detailed technical parameters prior to the completion of this rulemaking and the filing of applications for satellite system license modification. The blanket licensing application and modification processes will provide all affected parties full opportunity to review the potential impact on their operations of ancillary terrestrial services and allow the Commission to condition authorizations with any necessary technical constraints or coordination requirements to protect the operations of the affected existing licensees.

MSS licensees supported the Commission's administrative proposals, including the authorization of ancillary terrestrial operations by space system license modification and blanket licensing.[41] Although at least one party claims that each terrestrial facility needs to be licensed in order to ensure coordination with the Broadcast Auxiliary Service ("BAS"),[42] no details are provided to demonstrate that informal coordination under blanket licenses are inadequate to protect existing operations.

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40 *See e.g.* Comments of Kitcomm Satellite Communications at 4 and Telecommunications Industry Association/Wireless Communications Division at 6-8.

41 *See e.g.* Comments of Constellation at 30 and Motient at 28-30.

42 *See* Comments of Society of Broadcast Engineers at 3.

II. The Commission Should Adopt The Specific Details Of Ancillary Terrestrial Operations To Each MSS Band

MSS licensees in all three MSS bands between 1 and 3 GHz should be authorized to conduct ancillary terrestrial operations in order to insure that the benefits of efficient spectrum utilization are provided to the public. However, flexibility is needed in the service rules to be adopted in order to adapt the details of technical standards and frequency selection and coordination procedures to the specific conditions of each MSS band.

A. Ancillary Terrestrial Operations In The L-Band MSS

Motient provides a detailed description of the benefits that would flow from the inclusion of ancillary terrestrial facilities in its L-band GSO MSS system.[43] However, other commercial MSS systems have been operating at L-band since the late 1970s, and several parties involved in the provision of service using GSO satellites at L-band oppose ancillary terrestrial operations in the bands.[44] Other parties are concerned with the potential interference that could be caused to their operations, but may accept ancillary terrestrial operations at L-band if their concerns are satisfied.[45]

Constellation believes that the L-band MSS presents unique challenges in light of the long history of operations and the current state of market and system development. In particular, some current GSO MSS systems may not be able to take advantage of ancillary terrestrial operations in light of their current system design and offered services based on vehicular and portable terminals. The existing spectrum use arrangements among L-band MSS system

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43 *See* Comments of Motient at 5-23.

44 *See e.g.* Comments of the Aviation Industry Parties, Inmarsat, Stratos Mobile Networks et al. and Telenor Broadband Services.

45 *See e.g.* Comments of Aerospace and Flight Test Radio Coordinating Council, Comtech Mobile Datacom and Kitcomm.

operators do raise significant technical issues that must be addressed. However, they should not preclude the availability of ancillary terrestrial authorization to those MSS licensees that are able to take advantage of such facilities in order to improve spectrum efficiency and to serve more customers using handheld terminals. In any event, arguments against ancillary terrestrial operations in the L-band MSS should not be extrapolated to other MSS bands where circumstances are different.

B. Ancillary Terrestrial Operations In The 1.6/2.4 GHz MSS

The Big LEO MSS bands at 1.6/2.4 GHz are governed by a complex set of assignment and coordination procedures between the MSS licensees, and a carefully crafted set of technical standards to prevent interference to other radio services. These differences from the conditions in the L-band and 2 GHz MSS bands are likely to lead to differences in ancillary terrestrial facilities. In particular, the segmentation of the 1610 – 1626.5 MHz uplink band into code division multiple access ("CDMA") and time division multiple access ("TDMA") sub-bands should not be disturbed by the authorization of ancillary terrestrial operations. Specifically, the CDMA MSS licensees should be authorized to conduct ancillary terrestrial operations in the CDMA band segments and the TDMA MSS licensee should be authorized to conduct ancillary terrestrial operations in the TDMA band segment, subject to coordination between the MSS licensees.[46] Iridium, the TDMA MSS licensee agrees that it can operate TDMA terrestrial facilities in the TDMA segment and has confirmed plans that it will seek experimental authorization to do so. [47] However, Iridium proposes that separate ancillary terrestrial authorizations be granted for portions of the band that does not match the CDMA/TDMA band

[46] *See* Comments of Constellation at 14-16 and Globalstar at 18-19.

[47] *See* Comment of Iridium at 4.

segments. For the reasons discussed in Section I.B above, Constellation believes that such an approach is unworkable.

Several parties point to the potential for adjacent channel interference that might be caused by terrestrial base station transmitters in the 2483.5 – 2500 MHz MSS band into BAS receivers in ENG channel A9 at 2467 – 2483.5 MHz or into MMDS/ITFS channel A1 at 2500 – 2506 MHz.[48] While broadband PCS technical standards, such as those in §§24.232 – 24.236 and 24.238 may be appropriate for ancillary base station facilities operating in the 2 GHz MSS bands adjacent to the PCS bands, there is no technical basis to simply apply them to other MSS bands without first considering the nature of radio facilities in the adjacent bands. However, in the case of the 2483.5 – 2500 MHz band, there is no technical need to impose more stringent out-of-band emission standards or guardband requirements on transmitters in the 2483.5 – 2500 MHz band than are already applicable to BAS/ENG or MMDS/ITFS transmitters. Terrestrial base station facilities in the 2483.5 – 2500 MHz band should only have to be designed to operate with the same levels of out-of-band emissions caused by the facilities operating in the adjacent bands within their own bands.

C. Ancillary Terrestrial Operations In The 2 GHz MSS

The frequency selection and assignment procedures for the 2 GHz MSS differ significantly from those in the other two MSS bands, and the procedures for selecting ancillary terrestrial frequencies need to be adjusted accordingly. In particular, ancillary terrestrial operations should be permitted not only on the specific frequencies selected for satellite operations by the MSS licensee, but also on other unselected frequencies on a non-interference

[48] *See e.g.* Comments of Society of Broadcast Engineers at 10 and Wireless Communications Association at 2.

basis.[49] While Constellation believes that the technical standards for the handsets used by customers should be those developed for GMPCS, whether the transmissions are directed to satellites or terrestrial stations in any MSS bands,[50] it may be appropriate to apply the same technical standards to 2 GHz PCS base stations, and the fixed base stations operating in integrated 2 GHz MSS/terrestrial systems, in view of the proximity of both types of operations in the spectrum.

Constellation agrees with other parties that no revision of the Commission's current relocation process for implementation of 2 GHz MSS systems is necessary.[51] There is no need to place the mandatory negotiation period for relocation of 2 GHz BAS facilities on hold as suggested in at least one comment.[52] Regardless of whether MSS or terrestrial facilities are implemented in the 2008 – 2025 MHz band, prudence would dictate implementing BAS receivers with the best possible adjacent channel rejection. The case is even weaker for proposals to extend the 10-year sunset period,[53] in light of the long period of time that existing operators have been on notice for the potential of relocation and the need for finality of the re-accommodation process.

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49 *See e.g.* Comment of TMI Communications at 1-3. A number of related issues concerning the frequency selection process in the 2 GHz MSS bands, in particular the re-assignment of 2 GHz MSS frequencies among the other 2 GHz MSS licensees after a license is revoked for failure to comply with due diligence milestones, are being addressed in response to the Commission's *Memorandum Opinion and Order and Further Notice Of Proposed Rulemaking*, FCC 01-224 released August 20, 2001, ("Further Notice") in ET Docket No. 00-258. *See* Comments of Constellation filed October 22, 2001 and Reply Comments filed November 8, 2001 in that proceeding.

50 *See* Comment of Constellation at 35-36.

51 *See e.g.* Comment of New ICO Global at 50-51.

52 *See e.g.* Comment of Society of Broadcast Engineers at 3-4.

53 *See e.g. Id.*

III. Conclusion

Constellation believes that the authorization of ancillary terrestrial operations as part of the currently licensed L-band, 1.6/2.4 GHz and 2 GHz MSS systems will increase the quantity and quality of advanced wireless services offered to the public. In particular, it will insure that all users throughout the United States have access to a multitude of high quality advanced wireless services. Additionally, regulatory flexibility to operate ancillary terrestrial facilities will result in more efficient spectrum utilization by allowing MSS operators to serve more customers without requiring the allocation of additional spectrum.

Opposition to this regulatory flexibility comes primarily from terrestrial CMSR interests who seek the re-allocation of the 2 GHz MSS spectrum for their own use. Their claims that the Commission lacks the legal authority under Sections 303(y) or 309(j) to afford MSS licensees the same regulatory flexibility it has afforded many other licensees should be rejected. Instead, the Commission should promptly re-affirm its proposals to allow MSS licensees to conduct ancillary terrestrial operations and adopt service rules similar to those proposed by Constellation in its initial Comments in this proceeding.

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November 13, 2001

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CERTIFICATE OF SERVICE

I, Patricia A. Gibson, hereby certify that I have on this 13th day of November, 2001, caused copies of **REPLY COMMENTS OF CONSTELLATION COMMUNICATIONS HOLDING, INC.**, to be delivered by first-class mail, postage prepaid, to the following persons:

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